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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,138	04/20/2001	Thomas J. Drury	X-9332	9525

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/838,138

Applicant(s)

DRURY, THOMAS J.

Examiner

Victor S Chang

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 31 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached NOTE.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached NOTE.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-22.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

DANIEL ZIRKER
PRIMARY EXAMINER
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1700

Daniel Zinker

NOTE

1. Applicants proposal to amend claims 1, 7, 11, 12, 16 and 21 have not been entered, the Examiner notes that Applicant's statement that "the original claims were presented as pore sizes and requested to be changed by the previous examiner" (Remarks, page 5, second paragraph) appears to be unsubstantiated. Further, the Examiner notes that throughout the claims, the pore structure has been recited as "uniform pore", "pore", "pores openings", and previously as "pore openings", "pore size", etc. As such, the recitation relating to pore structure appears inconsistent, vague, indefinite, and confusing. Clear and consistent amendment is suggested. Also, it should be noted that it is untimely to submit Declaration after Final.
2. With respect to newly submitted Exhibit 1, which shows "BPTone 212XP material (3920-00307) had the best particle removal rate" (Summary of Exhibit 1), the Examiner notes that while the results on the last page of the Exhibit 1 shows that 3920-00307 212XP performs impressively better than the other samples, Exhibit 1 fails to expressly indicate that 3920-00307 212XP is the instantly claimed invention. Further, it is unclear as to what are the structures and compositions of Brush X, BPTone 186, and Brush Y. As such, Exhibit 1 clearly fails to distinctly show the instantly claimed invention as unobvious, and the Examiner respectfully repeats (see Paper No. 7, page 6) that in the absence of a formal test results, the Declaration appears to be non-factual evidences, but rather opinions of the inventor himself. If further prosecution, i.e., a CPA or RCE, is

contemplated, the Examiner suggests that all the elements in the Declaration should be clearly identified.

3. With respect to Applicant's statement that "Other testing and comment by those skilled in the art are attached in the declaration of Druary as Exhibit 2." (Remarks, page 5, bottom paragraph), the Examiner notes that assuming all the elements in the Declaration are clearly identified and relevant to the instant invention, the newly submitted Declaration appears to be persuasive. However, it is untimely to submit Declaration after Final.

4. With respect to Applicant's argument that "the Examiner argument that it is believed (by him) that the cleaning device ... inherently posses a mean flow pore pressure and a wet flow rate using water ... is not borne out by any facts and is merely a supposition." (Remarks, page 8, first full paragraph), the Examiner repeats (see Paper No. 7, pages 5-6, bridging paragraph) that that it is believed that the cleaning device of Bahten in view of Rosenblatt either inherently posses a mean flow pore pressure, a wet flow rate using water, etc. (see page 9 of Paper No. 3), as well as the dry flow rate inherently, or an obvious optimization to one of ordinary skill in the art, since the combination of prior art references teach essentially the same cleaning device as the instantly claimed invention.

5. With respect to Applicant's argument that "The Examiner's allegation that substantially skinless surface is inherently disclosed by Bahten or an obvious optimization to one of ordinary skill in the art is without merit and not based on any facts but merely upon supposition." (Remarks, page 8, third full paragraph), the Examiner

repeats (see Paper No. 7, page 4) that it is believed that the "substantially skinless surface" is either inherently disclosed by Bahten or an obvious optimization to one of ordinary skill in the art, since it is noted that the process of making the PVA foam with a pore forming agent of the instant claimed invention (Specification, page 8) is essentially the same as Bahten's disclosure (column 3, line 56 to column 4, line 33).